IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 588 of 2003

in

SPECIAL CIVIL APPLICATIONNo 8441 of 1990

with

CIVIL APPLICATION NO. 1971 of 2002.

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

S P THAKKAR

Appearance:

1. LETTERS PATENT APPEAL No. 588 of 2003
MS ARCHANA C. RAVAL, ASSTT. GOVERNMENT
PLEADER for Appellant.

MR DIPAK C RAVAL for Respondent No. 1

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 19/06/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

ADMIT. The service of notice of admission is waived by learned Counsel Mr. D.C. Raval, who appeared upon a caveat. Upon joint request the appeal is taken up for final hearing today in view of the peculiar facts and special circumstances. This Letters Patent Appeal at the instance of the Government is by way of challenge against the judgement and order of learned Single Judge passed in Special Civil Application No. 8441 of 1990 on 9.3.2001, by invocation of provision of Clause 15 of the Letters Patent.

2. The appellant is the original opponent and the respondent is the original petitioner and for the sake of convenience, they are hereinafter referred to in the same nomenclature. The petition came to be filed before learned Single Judge by the respondent for seeking the benefit of the amendment made in the Resolution by the Government with a prayer to treat the impugned order at Annexure "D" as illegal, unconstitutional, without jurisdiction, null and void.

3. The impugned order at Annexure "D" is the decision of the Government, whereby the request of the respondent - original petitioner for extending date of superannuation till end of academic term in view of the amendment made in the Resolution of the Government was rejected.

4. A few material and relevant facts may be highlighted so as to appreciate the merits and challenge in the appeal. The appellant - original petitioner last worked as Principal of R.C. Technical Institute, Saraspur, Ahmedabad, which is a Government Institute. The original petitioner attained the age of 58 years in Sept. 1990. It was contended that the petitioner was entitled to be continued and treated in service upto the end of the academic term, which was fixed 31.12.1990 and then revised to 5.1.1991. After retirement, he made representation which came to be rejected and hence, a

petition came to be filed invoking the provisions of Article 226 of the Constitution of India.

The learned Single Judge found in favour of the original petitioner as he is entitled to the benefit of the amended Government Resolution whereby the academic term came to be extended upto 5th January, 1991. By judgement dated 9.3.2001, learned Single Judge allowed SCA No. 8441 of 1990 with costs, which is questioned by the original respondent - appellant before us, by filing this Letters Patent under Clause 15 of the Letters Patent.

5. We have heard the learned Advocate appearing for the parties. We have been taken through the relevant and material record in the present case. We have also considered the relevant proposition of law.

It is an admitted fact that the respondent in this appeal - original petitioner retired from the office of the Principal on 30.9.1990 and he received all retiral dues and benefits. Later on, the Government Circular about the extension of the academic term came to be issued on 20th November, 1990, whereby the academic term was extended upto 5th January, 1991. The original petitioner - retired Principal therefore applied for the benefit of the amended provision and sought the relief that he should be declared to have continued in the service upto the last date of the academic term i.e. 5.1.1991 and that he should be paid monetary benefits on the basis as if he has continued till the last date of the academic term i.e. 5.1.1991.

6. The view and ultimate conclusion recorded by the learned Single Judge is sought to be supported by the learned Advocate appearing for the original petitioner - respondent herein on following two grounds:-

(i) That as per the Government Resolution and decision, the relevant year for retirement of the teaching staff will be on expiry of the academic term in the light of Annexure "A" dated 26th Aug. 1987;

(ii) That similarly situated persons are also extended and given the benefits of the amended Circular whereby the academic term came to be extended upto 5.1.1991.

7. Since both the points are interconnected and interpolated, they are required to be simultaneously

dealt with and decided.

In our opinion, the claim of the original petitioner is not justified when meticulously examined in light of the facts and circumstances emerging from the record of the present case. It is not in dispute that the original petitioner retired on 30th Sept. 1990 knowing well that academic term for relevant year was to expire on 31.12.1990, which subsequently came to be extended by one week upto 5.1.1991 by a Circular dated 20.11.1990, which does not say even remotely that it is made retrospectively operative. In other words, there is no any mention in this Circular that it will also be available or the benefit can be given to the teachers who have retired earlier. Again it is also very clearly spelt out from the record that even the benefit of retirement till 31.12.1990 could not be given and could not be availed by the original petitioner - the respondent before us in this appeal, held office of the Principal which does not belong to the vacation Department. The reply in this behalf conveniently and specifically articulates. It means that as per the policy of the Education Department of the State of Gujarat, the benefit of retirement till the last date of the academic session is not available to the Principal and the Head of the institution as they belong to non-vacation staff people. In our opinion, with due respect, the learned Single Judge has failed to appreciate the real text, tenor and content of the Circular in question and therefore has committed serious error in granting the benefit to the original petitioner in the writ petition and therefore, in exercise of powers under Clause 15 of the Letters Patent, it is incumbent upon us to put the impugned judgement and order in the correct legal sail. The petition therefore is required to be dismissed while allowing this appeal. Appeal therefore stands allowed without any order on costs and without any order on Civil Application.

(J.N.Bhatt, Acting C.J.) (A.L.Dave, J.)

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